

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's Own Motion into the Operations and Practices of the Conlin-Strawberry Water Co. Inc. (U-177-W), and its Owner/Operator, Danny T. Conlin; Notice of Opportunity for Hearing; and Order to Show Cause Why the Commission Should Not Petition the Superior Court for a Receiver to Assume Possession and Operation of the Conlin-Strawberry Water Co. Inc. pursuant to the California Public Utilities Code Section 855.

Investigation 03-10-038
(Filed October 16, 2003)

**ADMINISTRATIVE LAW JUDGE'S RULING
ON WATER DIVISION'S MOTION TO COMPEL**

This matter came before the Commission on May 3, 2004, on the Water Division's Motion for Order Compelling Responses to Data Requests (April 21, 2004). Cleveland Lee appeared for the Commission's Water Division. Thomas MacBride appeared for the respondents (Water Company). The following determinations were made concerning information requested in the motion (using for reference the categories of information set forth under part II of the motion):

- A. Cash utility journal. Respondents shall provide cash receipt journals or income statements, similar to Exhibit No. 1 attached to the original of this ruling (titled "Deposits 2000, Conlin Strawberry Water Co. Income Summary 2000"), showing in summary form receipts

- and/or deposits by month and day for June through December 2003.
- B. Detailed employment records from 1984-87. The request is unduly burdensome, and the information could have been required by Water Division many years earlier. Request denied.
- C. These requests concern the records of the Conlin Excavating and Logging (Excavating and Logging) firm. The Commission previously ordered by Resolution No. W-3827 (Feb. 16, 1994) that all transactions between the water company and the logging company must be “clearly identified and appropriately supported by written documentation.” *Id.* at 4. The Water Division relies on this resolution, as reiterated in *Strawberry Property Owners Ass’n v. Conlin-Strawberry Water Co.*, 68 CPUC 2^d 52, 65-55 (1996), as the basis for this request. The resolution is directed to the Water Company, not the Excavating and Logging company, and concerns the required documentation by the Water Company of transactions with Excavating and Logging. Excavating and Logging is not a party to this proceeding. The Water Division does not adequately justify the request. The request for the disclosure of items 2-2.6 through 2-2.10 is denied. I have previously ruled concerning bank account information concerning the Excavating and Logging Company.
- D. These requests concern information and documents about Water Company employees. The request is ambiguous in that it does not indicate a date range, but a subsidiary question somewhat clarifies the request since it asks for beginning and ending dates of employment. The information may produce admissible evidence concerning Water Company operations since Mr. Conlin was ordered to sever his active involvement in the Water Company in September 1996. Respondents are ordered to provide the requested information and documents, set forth in items 2-5.1 through 2-5.8, from September 1996 to the present, for past and current employees of the Water

- Company, unless the information or documents previously has been provided.
- E. This request concerns Mr. Conlin's work in Southern California or elsewhere from January 1, 2001 through December 31, 2003, a period during which he had been ordered by the Commission not to be actively involved in the Water Company. These documents and information may produce admissible evidence on the question of whether Mr. Conlin, a respondent, was in compliance with prior Commission orders. Respondents are ordered to provide the requested information and documents for the period of January 1, 2001, through December 31, 2003.
- F. The Water Division requests the Water Company's federal and state income tax returns for every year from 1984 through 2003. The Water Company is organized as a corporation. While Respondents argue that *Schnabel v. Superior Court*, 5 Cal. 4th 704 (1993), recognizes a taxpayer privilege against the forced production of state and federal returns, the qualified privilege is not available here. This is a regulatory enforcement proceeding rather than a civil proceeding, as was the situation in *Schnabel*. Additionally, *Schnabel* recognizes three exceptions to the privilege, and this proceeding implicates at least two of them. First, a corporation makes an intentional relinquishment of the privilege when it applies for a certificate of public convenience and necessity and chooses to operate as a public utility. Second, public policy favors the submission of utility tax returns to the Commission so that the financial affairs of the utility are better understood and the public and ratepayers are protected. The utility's limited expectation of confidentiality may be protected by submitting the tax records to the Commission with a request that they be held confidential in the case of third party inquiries. Respondent Water Company is ordered to provide the requested state and federal tax income returns for 1984-2003.

Respondents shall provide the Water Division with all of the information and documents specified above by May 10, 2004. For any of the required information and documents not provided at that time, Respondents shall indicate that the item does not exist or why it was not provided.

Because the Water Division has generally prevailed on its motion to compel, further modifications to the proceeding schedule are necessary; and they are set out as follows: All hearings and conferences are in the Commission Courtroom, 505 Van Ness Avenue, San Francisco.

Filing of any motions in limine concerning the Tuesday, May 11 evidentiary hearing (Rugg)	Wednesday, May 5, 2004
Filing of any responses to any motions in limine filed on May 5	Friday, May 7
Final Prehearing Conference for May 11 evidentiary hearing (Rugg); determination of any motions in limine; marking of exhibits	Monday, May 10 (10:00 a.m.)
Evidentiary hearing (Rugg only)	Tuesday, May 11 (9:00 a.m.)
Filing any motions in limine concerning remainder of case	Friday, May 14
Water Division files supplemental testimony based on information and documents ordered in this ruling	Monday, May 17
Filing of any responses to any motions in limine filed on May 14	Wednesday, May 19
Water Company's supplemental rebuttal testimony in response to the May 17 supplemental testimony	Thursday, May 20 (before 1:30 p.m. final prehearing conference)
Final PHC (remainder of case); determination of any motions in limine; marking of exhibits	Thursday, May 20 (1:30 p.m.)
Evidentiary hearing (cont.; remainder of	Monday-Wednesday, May

case)	24-26 (9:00 a.m. to 3:30 p.m. each day)
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IT IS SO RULED.

Dated May 7, 2004, at San Francisco, California.

/s/ John E. Thorson
John E. Thorson
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling On Water Division's Motion to Compel on all parties of record in this proceeding or their attorneys of record.

Dated May 7, 2004, at San Francisco, California.

/s/ Antonina V. Swansen
Antonina V. Swansen

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, *e.g.*, sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.